

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

ELIZABETH PEREZ, individually,

Plaintiff,

v.

BURST ORAL CARE, BURST USA, INC.,  
AND TANYA MARIA AKIM,

Defendants.

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Case No. 1:22cv-733

**DEFENDANTS' NOTICE OF REMOVAL**

Defendants Burst Oral Care and Burst USA, Inc. (the “Burst Defendants”)<sup>1</sup> hereby remove this action, pursuant to 28 U.S.C. §§ 1332(a), 1441 and 1446, from the 21st Judicial District Court in Bastrop County, Texas, to the United States District Court for the Western District of Texas – Austin Division.

**INTRODUCTION AND BACKGROUND**

On April 20, 2022, Plaintiff Elizabeth Perez (“Plaintiff”) commenced an action in the District Court in Bastrop County, Texas, captioned *Elizabeth Perez v. Burst Oral Care, Burst USA, Inc. and Tanya Maria Akim*, Cause No. 2073-21 (the “State Court Action”).

On June 24, 2022, Burst Defendants received a copy of Plaintiff’s original petition in the State Court Action. A true and correct copy of the petition and citation received by Burst Defendants on June 24, 2022 is attached hereto as **Exhibit A**.

The Burst Defendants filed *Defendants’ Special Appearance and, Subject to Special Appearance, Original Answer* in the state court on July 8, 2022. See **Exhibit C-9**. In accordance with 28 U.S.C. § 1446(a) and 28 U.S.C. § 1447(b), this Notice of Removal is accompanied by a copy of the state court’s docket sheet (**Exhibit B**), and all pleadings, process, and orders from the

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<sup>1</sup> “Burst Oral Care” is a trade name of Defendant Burst USA, Inc. and is not a separate legal entity.

State Court Action (**Exhibits C-1 to C-9**).

Plaintiff's petition asserts claims against Burst Defendants for alleged negligence under the doctrines of respondeat superior, negligence, gross negligence, and negligence per se.

### **GROUND FOR REMOVAL**

Removal of this case is proper under 28 U.S.C. §§ 1441 and 1446. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a), and all applicable requirements for removal are satisfied.

#### **A. Diversity Jurisdiction.**

This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1441 because this is a civil action (a) in which the amount in controversy exceeds the sum of \$75,000, exclusive of costs and interest, and (b) is between citizens of different states.

Plaintiff is an individual residing in Bastrop County, Texas and is a citizen of Texas. **Ex. A** at p. 1.

Burst Defendants are foreign corporations organized under the laws of the State of California and incorporated in Delaware. Burst Defendants' principal place of business is located in the State of California. Therefore, Burst Defendants are citizens of the State of California for diversity purposes. *See* 28 U.S.C. § 1332(c)(1) ("A corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.").

Defendant Tanya Maria Akim has not been served by Plaintiff, but she resides in and is a citizen of the State of California. **Ex. A** at p. 1.

Because Plaintiff is a citizen of Texas and Burst Defendants (and unserved Defendant Tanya Akim) are citizens of other states, there is complete diversity of citizenship pursuant to 28 U.S.C. § 1332(a). Additionally, all served Defendants consent to the removal of this case.

Diversity jurisdiction under 28 U.S.C. § 1332 also requires that the amount in controversy be in excess of \$75,000, exclusive of interest and costs. Plaintiff's petition states that she

seeks “at least TWO HUNDRED AND FIFTY THOUSAND and not more than one million dollars.” **Ex. A** p. 23. The amount in controversy requirement is met because the amount in dispute is greater than \$75,000 at the time of removal.

**B. Timeliness**

This Notice of Removal is filed within thirty (30) days of Burst Defendants’ receipt of the petition, as required by 28 U.S.C. § 1446(b). Burst Defendants received the petition on June 24, 2022. **Ex. A.**

**C. No Waiver**

Nothing in this Notice of Removal should be interpreted as a waiver or relinquishment of Burst Defendants’ right to assert defenses or objections based on any procedural or substantive defense available under state or federal law, or any counter-claims available to Burst Defendants against the Plaintiff, including Burst Defendants’ challenge to the lack of personal jurisdiction included *Defendants’ Special Appearance and, Subject to Special Appearance, Original Answer*.

**D. Service of Notice**

Burst Defendants will provide Plaintiffs with prompt written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d) and will file a copy of this Notice of Removal with the Clerk of the District Court in Bastrop County, Texas, where the petition was originally filed.

**E. Jury Demand**

Plaintiff’s state court petition demanded a jury.

**CONCLUSION**

Burst Defendants hereby remove the above-captioned action from the 21st Judicial District Court in Bastrop County, Texas, Cause No. 2073-21, to this Court and request that further proceedings be conducted in this Court as provided by law.

Respectfully submitted,

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By /s/Christopher D. Sileo  
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ATTORNEYS FOR BURST DEFENDANTS

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Defendants' Notice of Removal has been served on all counsel of record, as listed below, by electronic mail and facsimile on this 22nd day of July 2022.

VIA EMAIL at [service@glenlarsonlaw.com](mailto:service@glenlarsonlaw.com)  
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/s/Christopher D. Sileo  
Christopher D. Sileo